

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:

ALAN J. DIOLATA and REGINA C.
DIOLATA,

Debtor(s).

Case No. 10-12650-SJS

Adversary No. 10-01484-SJS

CHAPTER 7

*AMENDED COMPLAINT TO
DETERMINE DISCHARGEABILITY
OF EDUCATIONAL LOAN DEBTS*

ALAN J. DIOLATA and REGINA C.
DIOLATA,

Plaintiff,

vs.

SALLIE MAE, INC., and/or its successors
and assigns; AMERICAN EDUCATION
SERVICES, LLC., and/or its successors and
assigns; FIRST MARBLEHEAD
CORPORATION, and/or its successors and
assigns; GREAT LAKES EDUCATIONAL
LOANS SERVICES, INC., and/or its
successors and assigns; CHASE AUTO
FINANCE CORPORATION, and/or its
successors and assigns; DEVRY
UNIVERSITY, and/or its successors and
assigns; EDUCATIONAL CREDIT
MANAGEMENT CORPORATION, and/or
its successors and assigns; CA STUDENT
AID COMMISSION, and/or its successors
and assigns; US DEPARTMENT OF
EDUCATION and/or its successors and
assigns; BANK OF NEW YORK-MELLON,
and/or its successors and assigns; USA
FUNDS, INC., and/or its successors and

AMENDED COMPLAINT TO DETERMINE
DISCHARGEABILITY OF EDUCATIONAL LOAN
DEBTS - 1
(09-16961-SJS)
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1 assigns; NATIONAL STUDENT LOAN
2 PROGRAM, and/or its successors and
3 assigns; INTERNATIONAL ACADEMY OF
4 DESIGN AND TECHNOLOGY; and/or its
5 successors and assigns

6 Defendants.

7 Debtor-Plaintiffs Alan J. Diolata and Regina C. Diolata ("Debtor-Plaintiffs"), by
8 and through their attorneys, Christina Latta Henry and Seattle Debt Law, LLC, allege as follows:

9 **I. JURISDICTION AND VENUE**

10 1.1 This adversary proceeding is brought pursuant to Rules 4001 and 7001 of the
11 Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 523(a)(8)(A).

12 1.2 This court has subject matter jurisdiction over this adversary proceeding to
13 28 U.S.C. §§ 157 and 1334.

14 1.3 Venue is proper in this district pursuant to 28 U.S.C. § 1409.

15 1.4 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

16 **II. PARTIES**

17 2.1 Debtors are Washington State residents who currently reside in the city of Auburn
18 in King County, Washington.

19 2.2 Defendant Sallie Mae, Inc. ("Sallie Mae") provides financial aid for
20 postsecondary education and training.

21 2.3 Defendant American Education Services, LLC ("AES") guarantees and services
22 Federal and private student loan products.

23 2.4. Defendant First Marblehead Corporation ("Marblehead") provides financial aid
24 for postsecondary education and training.

1 2.5 Defendant Great Lakes Educational Loans Services, Inc. (“Lakes”) guarantees
2 and services Federal and private student loan products.

3 2.6 Defendant DeVry University, Inc. (“DeVry”), doing business as the Keller School
4 of Management (“Keller”), is a private, for-profit institution of higher education incorporated in
5 the State of Illinois and licensed to do business in Washington.

6 2.7 Defendant Educational Credit Management Corporation (“ECMC”) is a private,
7 for-profit institution of higher education and operates the Art Institute of Seattle (“Institute”).
8

9 2.8 Defendant CA Student Aid Commission (“Student”) guarantees and services
10 Federal and private student loan products.

11 2.9 Defendant US Department of Education (“Department”) guarantees and services
12 Federal and private student loan products.

13 2.10 Defendant Bank of New York-Mellon (“Mellon”) guarantees and services Federal
14 and private student loan products.

15 2.11 Defendant USA Funds, Inc. (“Funds”) guarantees and services Federal and
16 private student loan products.
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18 2.12 Defendant National Student Loan Program (“National”) guarantees and services
19 Federal and private student loan products.

20 2.13 Defendant International Academy of Design and Technology (“Academy”) is a
21 private, for-profit institution of higher education.
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23 **III. APPLICABLE LAW**

24 3.1 The substantive rights of the parties in this proceeding are governed by
25 Title 11 of the U.S. Code (hereinafter the “Bankruptcy Code”), the laws of the State of
26 Washington, to the extent that law is not displaced by the Bankruptcy Code, and other Federal
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1 law.

2 IV. FACTS

3 4.1 Debtor-Plaintiff Alan J. Diolata and Debtor-Plaintiff Regina C. Diolata were married
4 on August 1, 1997. They have two children, ages 10 and 12.

5 4.2. Debtor-Plaintiff Alan J. Diolata applied for and incurred student loan obligations
6 with Defendants in order to pay his tuition at DeVry in 2006.

7 4.3. Debtor-Plaintiff Regina C. Diolata applied for and incurred student loan obligations
8 with Defendants Sallie Mae and AES in order to pay her tuition while attending the Art Institute of
9 Seattle in 2004. During her second year, she transferred to the Academy.

10 4.4 Despite incurring substantial amounts of debts, Debtors do not recall receiving loan
11 counseling from Defendants.

12 4.5 Debtors' decision to enroll in higher education was heavily influenced by Devry,
13 Keller, Institute, and Academy's claims that Debtors' earning potential from successfully
14 completing their respective courses of study would range from \$35,000.00 to \$45,000.00 per
15 annum. Debtors hoped advanced degrees would result in a higher standard of living for both their
16 children and each other. Unfortunately, such claims never materialized.

17 4.6 Despite their status as full-time students, Debtors both worked multiple jobs to
18 defray expenses. Debtor-Plaintiff Alan Diolata worked first at DHL Worldwide Express from 1997
19 to 2005, and then at Alaska Airlines from 2005-2006. Debtor-Plaintiff Regina Diolata worked at a
20 paid internship from September 2007 to July 2008.

21 4.7 Debtor-Plaintiff Alan Diolata graduated from Devry in 2006 with a Bachelor of
22 Science in Technical Management degree and a certificate in Project Management. He hoped to
23 find a job with a steady source of income but could only find contract work in a depressed
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1 economy. Debtor found work to the best of his ability with multiple companies from 2006 to 2009
2 but never held a salaried position.

3 4.8 Debtor-Plaintiff Alan Diolata matriculated at Keller in 2006, hoping to acquire a
4 Masters in Business Administration, but due to deteriorating finances, could not afford to complete
5 the course of study.

6 4.9 Debtor-Plaintiff Alan J. Diolata currently serves as a contractor for Parker Staffing
7 Services, LLC, ("Parker"). His income is highly inconsistent and contingent on whether Parker
8 staffs him on a project with one of its clients. As a contractor, he receives no benefits or healthcare
9 insurance. While he believes his education helped him in past projects, he does not anticipate his
10 earning potential increasing markedly for the next fifteen years.

12 4.10 Debtor-Plaintiff Regina C. Diolata graduated from Academy in 2008 with a
13 Bachelor of Fine Arts degree, specializing in Fashion Design. She hoped to find work in the fashion
14 industry but had no success in the depressed economy.

15 4.11 Debtor-Plaintiff Regina C. Diolata is currently employed at Nordstrom, Inc.
16 ("Nordstrom"), as a Retail Associate. Her income is commission-based and varies unpredictably
17 from month-to-month. Whether she receives benefits or not, including healthcare, is contingent on
18 her gross income reaching a minimum amount. Consequently, she cannot predict whether she will
19 receive benefits on any given month. She does not utilize her education in her current position, and
20 she does not anticipate a promotion within Nordstrom, or the opportunity for alternative
21 employment, for the foreseeable future.

22 4.12 As a result, Debtors cannot afford health insurance for their children. Likewise, they
23 cannot afford to pay for extracurricular activities or independent childcare.

24 4.12 The monthly mortgage payment for the family home is \$1300. There are also utility
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1 bills and home maintenance associated with the home. Although Debtors have made payments to
2 the best of their ability, because of their excessive obligations, Debtors have ceased payments on
3 their mortgage for their residence. They anticipate surrendering their residence during their
4 bankruptcy.

5 4.13. Debtors filed a Chapter 7 petition on March 10, 2010 in the U.S. Bankruptcy Court
6 in the Western District of Washington (Seattle). According to the Claims Register for Debtors'
7 Chapter 7 Bankruptcy petition (Bankruptcy Petition No. 10-12650-SJS), the total amount of
8 Debtors' known student loan obligations is \$377,497.07.

9
10 4.13 Debtor-Plaintiff Alan C. Diolata consolidated his loans in an attempt to reduce and
11 meet his monthly payments. However, Debtors' monthly payments remain prohibitively high.

12 4.14 Due to the foregoing issues – low income; difficulties finding work with the degree
13 earned; infrequent and uncertain work schedules; lack of benefits or healthcare; and excessive
14 obligations, including anticipated loss of residence – the Debtors have never had the ability make
15 payments on their student loans to Defendants. They have called the Defendants many times and
16 have used all the forbearances and hardships they are entitled to. They have always remained in
17 contact with the Defendants. They are and have been candid about their situation. It is not feasible
18 for Debtors to repay their student loan obligations while maintaining a minimal standard of
19 living for themselves or their dependents.
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21 4.15 Based on the foregoing, the Debtors will never be able to significantly pay down the
22 principle balances of the loans.
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24 **V. COUNT I: DISCHARGEABILITY OF DEBT UNDER § 523(a)(8)(A)**

25 5.1 Debtor-Plaintiffs repeat, reallege, and incorporate by reference the foregoing
26 paragraphs.
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1 5.2 Debtor-Plaintiffs cannot, based on current income and expenses, maintain a
2 “minimal” standard of living for themselves or their dependents if forced to repay their education
3 loans to Defendants.

4 5.3 Moreover, this situation is likely to persist for a significant portion of the
5 repayment period of the educational loans.

6 5.4 Debtor-Plaintiffs have exhibited good faith in their efforts to repay their loans.

7 5.5 Therefore, Debtor-Plaintiffs’ educational loans are properly dischargeable under the
8 Bankruptcy Code.
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10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, Debtor-Plaintiffs Alan J. Diolata and Regina C. Diolata respectfully pray
12 for the following relief:
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14 6.1 That their educational loans with Defendants are totally dischargeable under §
15 523(a)(8)(A);

16 6.2 In the alternative, that their educational loans with Defendants are partially
17 dischargeable under § 523(a)(8)(A); and

18 6.3 For such other and further relief as the Court may deem just.
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21 DATED this 19th day of August, 2010.
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25 **SEATTLE DEBT LAW, LLC**
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/s/Christina Latta Henry
Christina Latta Henry, WSBA #31237
Attorneys for Debtor-Plaintiff